IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.6588 OF 2004

Narhari Govind Futak .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr.K.M.Kandekar for the petitioner

Mr.C.R.Sonawane, A.G.P. for the respondents

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 19TH AUGUST, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. In this petition, the petitioner is challenging the order passed by the Appellate Authority inter alia refusing to grant Caste Certificate to the petitioner.

2. The petitioner is claiming to belong to Schedule Tribe known as 'Mahadeo Koli'. In the present writ petition, the Appellate Authority has refused to issue the Caste Certificate on the

ground that the petitioner has not produced any evidence to establish his caste claim and therefore no certificate can be issued to the petitioner in the present case. There is no other reason given by the Appellate Authority in the order impugned herein.

3. We have perused the impugned order and the various documents annexed to the present petition. We find that the Appellate Authority while passing the impugned order has not considered the documents which are produced before it. Thus, we find that the order of the Appellate Authority in the aforesaid writ petition is unsustainable in law and therefore the same is liable to be quash and set aside.

4. The Division Bench of this court in the case of **Shri Jayant Anant Koli V. The State of Maharashtra and Ors. in Writ Petition No.3535 of 1997 decided on 8th August 1997** has in terms held as under:

"Order passed by the Sub-Divisional

Magistrate on 27th March, 1997 refusing to issue caste certificate to the petitioner, is impugned in the present petition. The ground assigned to refuse the certificate is that the petitioner has not adduced basic documents such as the certificates regarding the caste o his near relatives, of the period prior to 1950. The petitioner, however, states that he had produced those documents before the sub-divisional magistrate but of the later period. No reference is found in regard to the said certificate produced by the petitioner which shows that the Sub-Divisional Magistrate, without considering the said documents and not following the guide-lines and circulars issued by the Government in this behalf, passed the order. In fact, under the guide-lines and the circular the Sub-Divisional Magistrate is not required to carry out a detailed scrutiny at the time of caste certificate as this is the function of the Caste Scrutiny Committee. The Sub-Divisional Magistrate can issue a caste certificate if any blood relations of the petitioner has already been issued caste certificate. In the instant case, the petitioner has produced such certificates of his near relatives which show that the petitioner belongs to Mahadeo Koli, Scheduled Tribe. In the circumstances, the impugned order dated 27th of March, 1997 is set aside. The matter is now remanded back to the Sub-Divisional Magistrate, who shall consider the petitioner’s application for issuance of caste certificate in the light of the observations hereinabove."

5. In view of the Judgment of the Hon’ble Supreme Court of India, in the case of **Kumari Madhuri Patil and Anr. v. Addl. Commissioner, Tribal**

Development and Ors. reported in (1994) 6 Supreme Court Cases 241, the caste claim has to be validated by the Caste Scrutiny Committee. Therefore, we are of the view that the authorities namely the respondent no.3 in the aforesaid writ petition should be directed to issue the caste certificate to the petitioner and thereafter the same can be filed before the Caste Scrutiny Committee for its validation. The petitioner can produce all documents before the Caste Scrutiny Committee in support of his caste claim. Caste Scrutiny Committee can thereafter conduct a vigilance enquiry in support of the documents produced by the petitioner and after going through the documents and report of the vigilance enquiry, the caste committee should decide whether the said caste certificate should be validated or not.

6. In the light of the aforesaid, we pass the following order:

(i) The respondent no.3 shall issue the caste certificate to the petitioner.

(ii) The Caste Scrutiny Committee shall decide the validity of such caste certificate in accordance with the direction contained in the order within a period of 3 months from the date of the receipt of the application for validation. The Caste Scrutiny Committee shall decide the matter in accordance with law. The petitioner will not use the said caste certificate till the same is validated by the Caste Scrutiny Committee for any purpose whatsoever.

(iii) Petition is dispose of accordingly. However, there shall be no order as to costs.

Parties to act on a copy of this order duly authenticated by the Court Stenographer.